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AUG 04 2006
OFFICE OF PETITIONS

In re :
Simmons, et al. : DECISION REGARDING
Application No. 10/020,786 : PATENT TERM ADJUSTMENT
Filed: December 13, 2001 :
Patent No. 6,979,556 :
Issued: December 27, 2005 :
:

This letter is in response to the "REQUEST FOR RECONSIDERATION OF DECISION REGARDING PATENT TERM ADJUSTMENT MAILED MARCH 31, 2006 AND REQUEST FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(d)", filed April 19, 2006. Patentees request that the determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from one hundred fifty-seven (157) days to two hundred twenty-one (221) days.

The application for patent term adjustment is DISMISSED.

On December 27, 2005, the above-identified application matured into U.S. Patent No. 6,979,556. The patent issued with a Patent Term Adjustment of one hundred fifty-seven (157) days.

Patentees state that the patent issuing is not subject to a terminal disclaimer.

The Office determined a patent term adjustment of one hundred fifty-seven (157) days based on an adjustment for PTO delay of nineteen (19) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1), one hundred seventy-eight (178) days pursuant to 35

U.S.C. 154(b)(1)(A)(iv) and 37 C.F.R. §1.703(a)(6) and one hundred eight-two (182) days pursuant to 35 U.S.C. 154(b)(1)(B)(iii) and 37 C.F.R. § 1.703(b), reduced by Applicants' delays of fifty-eight (58) and thirty-three (33) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b), and sixty seven (67) days and sixty-four (64) days pursuant to 35 U.S.C. 154(b)(2)(C)(iii) and 37 C.F.R. § 1.704(c)(8). The adjustment of sixty-three (64) days is at issue.

Patentees filed an application for patent term adjustment on January 26, 2006. However, the request was dismissed in a decision mailed on March 31, 2006.

With the request for reconsideration, patentees have certified under 37 C.F.R. §1.704(d) that "each item of information contained on the IDS of April 23, 2004 was first cited in a communication from a foreign patent office in a counterpart application and that this communication was not received by an individual designated in § 1.56(c) more than 30 days prior to filing the IDS" (emphasis added).

Patentees have still not made a proper 1.704(d) statement, because applicants stated that the "IDS was first cited in a communication from a foreign patent office", whereas 1.704(d) requires a statement that the "IDS was first cited in **any** communication".

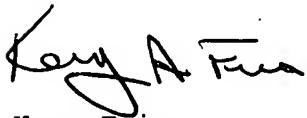
Accordingly, applicant delay of sixty-three (64) days was properly assessed pursuant to 37 C.F.R. § 1.704(c)(8).

In view thereof, the correct determination of patent term adjustment is **one hundred fifty-seven (157) days**.

If patentees want to make a proper assertion under §1.704(d), then patentees may file a Request for Reconsideration of this patent term adjustment decision, with a statement mirroring the language of §1.704(d). Patentees are given **thirty (30) days** to respond to this decision. No extensions of time will be granted under 37 C.F.R. § 1.136(a).

No fee is required for a request for reconsideration. Accordingly, the \$200 fee submitted is being refunded to petitioner under separate cover.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.



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